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No. 88-1503

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

NANCY BETH CRUZAN, by her parents and co-guardians, LESTER L. and JOYCE CRUZAN,
Petitioners,

vs.

DIRECTOR OF MISSOURI DEPARTMENT OF HEALTH, and ADMINISTRATOR OF THE MISSOURI REHABILITATION CENTER AT MT. VERNON,
Respondents,

vs.

THAD C. McCANSE, Guardian ad litem,
Respondent.

On Writ of Certiorari to the Missouri Supreme Court

BRIEF OF AMICI CURIAE DOCTORS FOR LIFE AND MISSOURI DOCTORS FOR LIFE

In support of Respondents:

Director of Missouri Department of Health, and Administrator of the Missouri Rehabilitation Center at Mt. Vernon

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INTEREST OF AMICI

Doctors for Life is a not-for-profit Missouri corporation incorporated in 1979 with approximately 1,800 members nationwide, all of whom are physicians or who possess equivalent doctoral degrees. Doctors for Life's purpose is essentially educational and informational aimed at the medical profession nationally and promotes, in part, the traditional medical ethic of respect for all human life at all stages of biological development from conception to death.

Missouri Doctors for Life is a not-for-profit Missouri corporation incorporated in 1973 with approximately 600 members, all of whom are physicians or who possess equivalent doctoral degrees. Missouri Doctors for Life's purpose is essentially educational and informational aimed at the medical profession in Missouri and promotes, in part, the traditional medical attitude of respect for all human life regardless of race, creed, color, religion or stage of biological development.

SUMMARY OF ARGUMENT

The provision of nutrition and hydration to each person, including Nancy Cruzan, is fundamental care to which all human beings are entitled at all stages of life. This has been the traditional medical ethic and human ethic that has applied in Western Civilization for over two thousand years. To meet a utilitarian goal, certain members of medical organizations in consort with certain modern "medical ethicists" have attempted to create a new ethic claiming that food and water are medical treatment which can and should be withdrawn at the discretion of family and physicians. To supply food and water to a human being is clearly not medical treatment but is a basic human need required to sustain all life.

Human life is intrinsically good and, therefore, individuals should not be starved or dehydrated to death because their "quality of life" does not meet the expectations of others. Legalizing the starvation/dehydration of Nancy Cruzan or any other patient as a new medical treatment and an acceptable new medical ethic will lead, both the medical profession and our entire society, inexorably down the path to barbarism.

The proper and logical holdings of the Missouri Supreme Court in re Cruzan should be upheld and lower courts should be instructed that food and water (nutrition and hydration) are basic human needs and not medical treatment and may not be removed in order to bring about the death of a patient.

ARGUMENT

I. THE MISSOURI SUPREME COURT CORRECTLY HELD THAT NUTRITION AND HYDRATION ARE NOT MEDICAL TREATMENT AND CANNOT BE WITHDRAWN.

On March 15, 1986, the American Medical Association with the Hastings Center in a meeting entitled "A New Ethic for the New Medicine" published a statement declaring that food and water had suddenly become "medical treatment."[1] On September 11, 1986, the Supreme Court of Massachusetts decided a case in favor of withholding food and water from a person with brain damage. Since that date many courts have cited the above in allowing the withdrawal of food and water from helpless, incompetent and merely satiated with life individuals.

Prior to March 15, 1986, food and water had been considered by all mankind as "basic human needs," which along with air (which is freely available in our atmosphere) are necessary for life itself for every living creature. People exist all over the world without medical treatment, but they certainly cannot exist without food and water.

It is difficult to expand the argument against the AMA position since it seems so axiomatic as not to be

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[1] *A New Ethic for New Medicine* sponsored by the AMA Council on Ethical and Judicial Affairs and the Hastings Center held in New Orleans, March 14-16, 1986.

subject to additional proof. Justice Nolan in his dissent in *Brophy,* 497 N.E.2d 620 stated it clearly and succinctly:

> The court today has rendered an opinion which affronts logic, ethics, and the dignity of the human person.
>
> As to logic, the court has built its entire case on an outrageously erroneous premise, i.e., food and liquids are medical treatment. The issue is not whether the tube should be inserted but whether food should be given through the tube. The process of feeding is simply not medical treatment and is not invasive, as that word is used in this context. Food and water are basic human needs. They are not medicines and feeding them to a patient is just not medical treatment. Because of the faulty premise, the court's conclusions must inevitably fall under the weight of logic.
>
> In the forum of ethics, despite the opinion's high-blown language to the contrary, the court today has endorsed euthanasia and suicide. Suicide is direct self-destruction and is intrinsically evil. No set of circumstances can make it moral. Paul Brophy will die as a direct result of the cessation of feeding. The ethical principle of double effect is totally inapplicable here. This death by dehydration and starvation has been approved by the court. He will not die from the aneurysm which precipitated loss of consciousness, the surgery which was performed, the brain damage that followed or the

> insertion of the G-tube. He will die as a direct result of the refusal to feed him. He will starve to death, and the court approves this death. (See Anne Bannon, "Rx: Death by Dehydration," *The Human Life Review,* Vol. 12, No. 3 [Summer, 1986], p. 70).
>
> I pass over the glaring weakness in the evidentiary basis for the finding that Paul Brophy would decline provisions for food and water. The evidence that he knew the horrors of such a death is not present in this case, and without such evidence, it can be argued persuasively that Brophy never made a judgment that food and water should be denied him.
>
> Finally, I can think of nothing more degrading to the human person than the balance which the court struck today in favor of death and against life. It is but another triumph for the forces of secular humanism (modern paganism) which have now succeeded in imposing their anti-life principles at both ends of life's spectrum. Pro dolor.[2]

Judges, physicians, and guardians violate their charge to do good and avoid evil when they conspire to deliberately deprive a living human being of food and water for the express purpose of bringing about the death of that individual. Life is *intrinsically* good. This is a fundamental truth of human existence. We all wish to exist. We are all designed to exist.

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[2] *Brophy v. New England Sinai Hospital* 398 Mass 417, 497 N.E.2d 620 (dissent)(1986).

The new ethic claims that it is the "quality of life" that determines whether or not life is good. The new ethic maintains that life of a "poor quality" is not worthy of continued existence and that the individual living such a life should be put out of his or her misery. The corollary to this pragmatic approach to human existence is that such individuals have no right to live - only a right to die.

The new ethicians would have us believe that Nancy Cruzan's life is of no benefit either to herself or to society and that, therefore, her life is not worth preserving. Here in the United States of America we have all been taught that none of us - not even the State - may take the life of an innocent human being. When that human being is sick and helpless as well as innocent, should we not be more protective of that life rather than less protective?

Joseph Piccione in "LAST RIGHTS: Treatment and Care Issues in Medical Ethics" states:

> Modern culture has come to assert the fundamental and inherent dignity of each person, yet is willing to rescind this truth when the person loses the possibility of future function. The contradiction involved demonstrates the failure of the utilitarian instrumentalist approach, which is all too willing to transgress the basic dictum of medical ethics, "do no harm."[3]

[3] *Piccione, Joseph J., LAST RIGHTS: Treatment and Care Issues in Medical Ethics,* pp. 8-9, Currents in Family Policy, Free Congress Research and Education Foundation, 1984.

Healthy times, sick times, good times and bad times are all part of the human experience. The fact that Nancy Cruzan is sick and medical science is unable to improve her condition at this time should not deny her basic human rights. Her present medical condition does not constitute a basis to deny her food and water, and the respect and dignity of a member of the human race. To provide her with nutrition is basic justice and has been the standard of care - not the standard of medical treatment - of the culture to which we have belonged for over two thousand years.

To provide food and water is to sustain life. It is not extraordinary medical treatment. There is a clear purpose in those who, now, categorize food and water as "medical treatment". That purpose is to influence courts to determine issues, such as are present in this case, based upon that categorization. The Supreme Court of Missouri in the instant case states at page 423: "We refuse to succumb to the semantic dilemma created by medical determinations of what is treatment."[4] Rather they chose to look at whether the providing of food and water is burdensome on the individual or whether it is a good care requirement.

The opinion of the AMA cited in the first paragraph of this brief is the opinion of seven (7) persons on a committee. There are over 250,000 members of the AMA. A study published in the ARCHIVES OF INTERNAL MEDICINE (an AMA publication) near the time the AMA took the above position, revealed

[4] *Cruzan v. Harmon,* 760 S.W.2d 408 (Mo. banc 1988)

seventy-three percent (73%) of physicians would attempt to provide adequate nutrition and hydration even for a comatose patient dying of an untreatable, painful, malignant neoplasm.[5] In "Against the Emerging Stream" by Mark Siegler and Alan Weisbard, the authors state the traditional goals of the physician:

> To cure sometime, to relieve occasionally, to comfort always. Physicians also would be spared the direct causal responsibility for the death of a patient and the inevitable psychological associations of this practice with active euthanasia . . . . We have deep concerns about accepting the practice of withholding fluids from patients because it may bear the seeds of unacceptable social consequences. We have witnessed too much history to disregard how easily a society may disvalue the lives of the unproductive. The 'angel of mercy' can become the fanatic, bringing the 'comfort' of death to some who do not clearly want it, then to others who 'would really be better off dead' and finally to classes of 'undesirable persons.'[6]

The proposed new ethic is clearly contrary to the traditional respect, dignity and equality given to all patients by the medical profession. The proposed new ethic would not only sow the seeds for widespread killing of innocent helpless human beings at a stage of their life

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[5] *Micetich KC, Steinnecker PH, Thomasma DC:* Are intravenous fluids morally required for a dying patient? Archives of Internal Medicine 1983; 143:975-978.

[6] *Siegler, Mark and Weisbard, Alan,* "Against the Emerging Stream," Archives of Internal Medicine, 145:130, January, 1985.

when they most need our respect, love, and tender compassionate care, but it would also deny them even the possibility of benefits from future advances in medical science.

CONCLUSION

For the above reasons stated, the decision of the Missouri Supreme Court should be affirmed, because to deprive any human being of food and water - no matter how it is served to them - for the deliberate purpose of bringing about their death is a violation of their due process rights.

Respectfully submitted,

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